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October 11, 2005

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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB204
Washington, DC 20554

Re: *Children's Television Obligations of Digital Television
Broadcasters*, MM Docket No. 00-167

Dear Ms. Dortch:

Viacom Inc., The Walt Disney Company, NBC Universal, and NBC Telemundo Co. (collectively the "Companies") write to emphasize their commitment to provide quality children's programming, to clarify the bases for their Motion to Extend the Effective Date Or, In the Alternative, Administrative Stay ("Motion"),¹ and to briefly respond to the Opposition thereto.²

Foremost, we emphasize that granting the Motion will not alter the *status quo*. The Commission's children's television regulations now in effect have been deemed sufficient for many years to protect children, and the Companies have and will continue to comply with those existing regulations in good faith. The Motion merely seeks to afford the Commission sufficient time to resolve the pending reconsideration petitions regarding the additional, new rules that were adopted in November 2004, so that the Commission can adopt revised rules consistent with the First Amendment, the Administrative Procedure Act ("APA"), the Children's Television Act ("CTA"), and the public interest.

Notwithstanding the fact that the Motion seeks merely to preserve the existing rules pending resolution of reconsideration petitions, opponents of the Companies' Motion make vague and unsubstantiated claims that children will

¹ See Motion for Extension of Effective Date or, in the Alternative, Administrative Stay, Viacom Inc., The Walt Disney Company, NBC Universal, and NBC Telemundo Co., MM Docket No. 00-167 (filed Sept. 26, 2005).

² See Opposition to Motion for Extension [sic] of Effective Date or, in the Alternative, Administrative Stay, Children's Media Policy Coalition, MM Docket No. 00-167 (filed Oct. 3, 2005).

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somehow be harmed by delaying the effective date of the legally suspect rules.³ Such wholly unfounded allegations are based on the mistaken premise that the Commission's *existing* children's television rules harm children. The opponents do not and cannot demonstrate the validity of their premise.

Additionally, the Companies want to reiterate the bases for their original stay analysis.⁴ Contrary to suggestions by opponents,⁵ our Motion makes clear, based on well-settled precedent, that, absent a stay, the Companies will suffer substantial and irreparable harm that goes beyond a mere loss of measurable income.⁶ Moreover, again based on settled precedent, the revised rules raise serious First Amendment implications and violate fundamental principles of administrative law.⁷ It is in *everyone's* interest, including those with a strong interest in advancing the goals of the CTA, to allow the Commission the opportunity to address these concerns with the rules prior to their effective date.

Finally, we would like to note that the Commission has recently agreed to stay the effective date of regulations of an arguably greater significance when parties must expend substantial resources to comply with the rules and must face "a degree of regulatory uncertainty during the pendency of the [reconsideration]

³ See Opp'n at 10.

⁴ We continue to advance any other arguments – *e.g.*, arguments based on statutory and Administrative Procedure Act claims – listed in the original Motion.

⁵ Opp'n at 3, 23.

⁶ Motion at 27-29 (discussing First Amendment harms, how the inability to recover damages against a governmental agency represents irreparable harm, and discussing loss of customer goodwill and competitive injury).

⁷ *Id.* at 23. In addition to making conclusory statements that the regulations satisfy essentially any level of scrutiny, the Children's Media Policy Coalition curiously cites *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 561-66 (2001). Opp'n at 19 n.60. In *Lorillard*, the Supreme Court *invalidated* a number of state advertising restrictions on tobacco products. *Lorillard*, 533 U.S. at 565 (stating that "speech regulation cannot unduly impinge on the speaker's ability to propose a commercial transaction").

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proceeding[s].” *In re Petitions for Waiver of the Emergency Alert System Rules filed by Various Cable Television Systems*, Order, No. EB-05-HS-034 (¶ 9) (Sept. 23, 2005). The same regulatory uncertainty is at play during the pendency of the reconsideration petitions and petitions for review, and the same modest interim relief should be granted.

Respectfully submitted,

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